

## CHAPTER NO. 301

## SENATE BILL NO. 223

By Curtis S. Person, Jr., Kurita

Substituted for: House Bill No. 543

**By Ferguson, Mr. Speaker Naifeh, Sontany, Maddox, Shepard, Michael Turner, Brenda Turner, Shaw, Harwell, Hargrove, Sargent, Wood, Harmon**

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 11, relative to criminal background checks on direct care employees of health care facilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new, appropriately designated section:

68-11-256. (a) All nursing homes as defined in § 68-11-201 shall initiate a criminal background check on any person who is employed by the facility in a position which involves providing direct care to a resident or patient, prior to or within seven (7) days of employment.

(b) Any person who applies for employment in a position which involves providing direct care to a resident or patient in such a facility shall consent to:

(1) Provide past work and personal references to be checked by the nursing home; and/or

(2) Agree to the release and use of any and all information and investigative records necessary for the purpose of verifying whether the individual has been convicted of a criminal offense in the state of Tennessee, to either the nursing home or its agent, or to any agency that contracts with the state of Tennessee, to any law enforcement agency, or to any other legally authorized entity; and/or

(3) Supply a fingerprint sample and submit to a state criminal history records check to be conducted by the Tennessee Bureau of Investigation, or a state and federal criminal history records check to be conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation; and/or

(4) Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.

(c) A nursing home shall not disclose criminal background check information obtained under subsection (b) to a person who is not involved in evaluating a person's employment, except as required or permitted by state or federal law.

(d) Any costs incurred by the Tennessee Bureau of Investigation, professional background screening organization, law enforcement agency, or other legally authorized entity, in conducting such investigations of such applicants may be paid by the nursing home, or any agency that contracts with the state of Tennessee requesting such investigation and information, or the individual who seeks employment or is employed. Payments of such costs to the Tennessee Bureau of Investigation are to be made in accordance with the provisions of Tennessee Code Annotated, §§ 38-6-103 and 38-6-109. The costs of conducting criminal background checks shall be an allowable cost under the state Medicaid program, if paid for by the nursing home.

(e) The provisions of this subsection shall also apply to any company, organization, or agency that provides or arranges for the supply of direct care staff to any nursing home licensed in the state of Tennessee. Such company, organization, or agency shall be responsible for initiating a criminal background check on any person hired by that entity for the purposes of working in a nursing home, and shall be required to report the results of the criminal background check to any facility in which the organization arranges for that individual to work, upon such a request by a facility.

(f) A nursing home that declines to employ or terminates a person based upon criminal background information provided to the facility under this act shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

SECTION 2. This act shall take effect January 1, 2004, the public welfare requiring it.

**PASSED: May 21, 2003**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 11<sup>th</sup> day of June 2003**

  
PHIL BREDESEN, GOVERNOR